

Appl. No. : **10/660,357**
Filed : **September 10, 2003**

REMARKS

Claims 1-27 are pending in the instant application. No amendments have been made by way of this response. Thus, no new matter has been added.

The objections to the claims and specification for containing grammatical informalities have been withdrawn. In addition, the rejections of the claims under 35 U.S.C. § 112 have been withdrawn. Thus, the only remaining rejection in the instant application is the rejection of Claims 1-27 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-21 of co-pending Application Serial No. 10/330,530. Specifically, the Office Action states that commonly assigned Application Serial No. 10/330,530 would form the basis for a rejection of the noted claims under 35 U.S.C. § 103(a) if the commonly assigned application qualifies as prior art under 35 U.S.C. § 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made.

The instant application is wholly owned by Abgenix, Inc. and Board of Regents, the University of Texas System. The assignment of the instant application from Larry L. Green to Abgenix, Inc. is recorded at Reel No. **014716**, Frame No. **0509** by the Assignment Branch of the Patent and Trademark Office. The assignment of the instant application from Menashe Bar-Eli to Board of Regents, The University of Texas System is recorded at Reel No. **014716**, Frame No. **0511**.

Co-pending Application Serial No. 10/330,530 is likewise wholly owned by Abgenix, Inc. and Board of Regents, the University of Texas System. A Request to Correct Inventorship to add Larry L. Green and Menashe Bar-Eli as joint inventors has been filed in co-pending Application Serial No. 10/330,530 on even date herewith. Enclosed herewith are 1) a copy of the assignment of co-pending Application Serial No. 10/330,530 from Larry L. Green to Abgenix, Inc. and 2) a copy of the assignment of co-pending Application Serial No. 10/330,530 from Menashe Bar-Eli to Board of Regents, the University of Texas System, both of which were forwarded to the Assignment Branch of the Patent and Trademark Office on September 9, 2005. The assignment of co-pending Application Serial No. 10/330,530 from Jean Gudas to Abgenix, Inc. is recorded at Reel No. **013911**, Frame No. **0854** by the Assignment Branch of the Patent and Trademark Office. Accordingly, co-pending Application Serial No. 10/330,530 is wholly owned by Abgenix, Inc. and Board of Regents, the University of Texas System.

Appl. No. : **10/660,357**
Filed : **September 10, 2003**

As evidenced by assignments discussed above, the instant application and co-pending Application Serial No. 10/330,530 were at the time the invention was made, owned or subject to obligation of assignment to Abgenix, Inc. and Board of Regents, the University of Texas System. Thus, the inventions claimed in the instant application and co-pending Application Serial No. 10/330,530 were commonly owned at the time the invention was made. As noted in the Office Action, a showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. § 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. § 102(f) or (g), or 35 U.S.C. § 102(e) for applications filed after November 29, 1999. Because the claimed invention and that of co-pending Application Serial No. 10/330,530 were at the time the invention was made commonly owned by Abgenix, Inc. and Board of Regents, the University of Texas System, co-pending Application Serial No. 10/330,530 is disqualified as prior art under 35 U.S.C. § 103(c). M.P.E.P. § 706.02(l)(1).

Pursuant to the M.P.E.P. § 1490, for co-pending applications, “[i]f the [obviousness type double patenting (ODP)] rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer. A terminal disclaimer must be required in the later-filed application before the ODP rejection can be withdrawn and the application be permitted to issue.” Accordingly, Applicants respectfully submit herewith a terminal disclaimer, disclaiming the terminal part of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent issuing from co-pending Application Serial No. 10/330,530.

In view of the foregoing, Applicants respectfully submit that the only remaining rejection of the instant application has been overcome. Allowance of the instant application is therefore respectfully requested.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejection set forth in the outstanding Office Action has been addressed and that the application is now in condition for allowance. Accordingly, Applicants request expeditious allowance of the pending claims.

Appl. No. : 10/660,357
Filed : September 10, 2003

The undersigned has made a good faith effort to respond to the rejection set forth in the Office Action and to place the claims in condition for allowance. Nevertheless, if any undeveloped issues remain, or if any issues require clarification, the Examiner is respectfully requested to call the undersigned to discuss such issues.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: Oct. 5, 2005

By: Sheila R. Gibson

Sheila R. Gibson

Registration No. 54,120

Attorney of Record

Customer No. 20,995

(619) 235-8550

1970677 : 100405